

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 916
92ND GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 24, 2004, with recommendation that the Senate Committee Substitute do pass.

3308S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 570.223 and 575.120, RSMo, and to enact in lieu thereof three new sections relating to identity theft, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 570.223 and 575.120, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 570.223, 570.224, and 575.120, to read as follows:

570.223. 1. A person commits the crime of identity theft if he **or she** knowingly and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer or use, one or more means of identification not lawfully issued for his **or her** use.

2. [Identity theft is punishable by up to six months in jail for the first offense; up to one year in jail for the second offense; and one to five years imprisonment for the third or subsequent offense.] **The term "means of identification" as used in this section includes, but is not limited to, the following:**

- (1) **Social Security numbers;**
- (2) **Drivers license numbers;**
- (3) **Checking account numbers;**
- (4) **Savings account numbers;**
- (5) **Credit card numbers;**
- (6) **Debit card numbers;**
- (7) **Personal identification (PIN) code;**
- (8) **Electronic identification numbers;**
- (9) **Digital signatures;**

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(10) Any other numbers or information that can be used to access a person's financial resources;

(11) Biometric data;

(12) Fingerprints;

(13) Passwords;

(14) Parent's legal surname prior to marriage;

(15) Passports; or

(16) Birth certificates.

3. A person found guilty of identity theft shall be punished as follows:

(1) Identity theft or attempted identity theft which does not result in the theft or appropriation of credit, money, goods, services, or other property is a class B misdemeanor;

(2) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property not exceeding five hundred dollars in value is a class A misdemeanor;

(3) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding five hundred dollars and not exceeding one thousand dollars in value is a class D felony;

(4) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one thousand dollars and not exceeding ten thousand dollars in value is a class C felony;

(5) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding ten thousand dollars and not exceeding one hundred thousand dollars in value is a class B felony;

(6) Identity theft which results in the theft or appropriation of credit, money, goods, services, or other property exceeding one hundred thousand dollars in value is a class A felony.

4. In addition to the provisions of subsection [2] 3 of this section, the court may order that the defendant make restitution to any victim of the offense. Restitution may include payment for any costs, including attorney fees, incurred by the victim:

(1) In clearing the credit history or credit rating of the victim; and

(2) In connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising from the actions of the defendant.

5. In addition to the criminal penalties in subsections 3 and 4 of this section, any person who commits an act made unlawful by subsection 1 of this section shall be liable to the person to whom the identifying information belonged for civil damages of up to five thousand dollars for each incident, or three times the amount of actual damages, whichever amount is greater. A person damaged as set

forth in subsection 1 of this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of subsection 1 of this section. The court, in an action brought under this subsection, may award reasonable attorneys' fees to the plaintiff.

6. If the identifying information of a deceased person is used in a manner made unlawful by subsection 1 of this section, the deceased person's estate shall have the right to recover damages pursuant to subsection 5 of this section.

7. Any person charged with identity theft shall be prosecuted:

- (1) In the county in which the offense is committed; or
- (2) If the offense is committed partly in one county and partly in another, or if the elements of the offense occur in more than one county, then in any of the counties where any element of the offense occurred; or
- (3) In the county in which the defendant resides; or
- (4) In the county in which the victim resides; or
- (5) In the county in which the property obtained or attempted to be obtained was located.

Civil actions under this section must be brought within five years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

8. Civil action pursuant to this section does not depend on whether a criminal prosecution has been or will be instituted for the acts that are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law.

9. Sections 570.223 and 570.224 shall not apply to the following activities:

- (1) A person obtains the identity of another person to misrepresent his or her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or another privilege denied to minors;
- (2) A person obtains means of identification or information in the course of a bona fide consumer or commercial transaction;
- (3) A person exercises, in good faith, a security interest or right of offset by a creditor or financial institution;
- (4) A person complies, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so.

10. Notwithstanding the provisions of subdivisions (1) or (2) of subsection 3 of this section, every person who has previously pled guilty to or been found guilty of identity theft or attempted identity theft, and who subsequently pleads guilty to or is found guilty of identity theft or attempted identity theft of credit,

money, goods, services, or other property not exceeding five hundred dollars in value is guilty of a class D felony and shall be punished accordingly.

11. The value of property or services is its highest value by any reasonable standard at the time the identity theft is committed. Any reasonable standard includes, but is not limited to market value within the community, actual value, or replacement value.

12. If credit, property, or services are obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the identity thefts are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft and the value may be the total value of all credit, property, and services involved.

13. In a criminal proceeding pursuant to this section, venue will be proper in any county where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

14. A person who commits the crime of identity theft for the purpose of committing a terrorist act as defined by existing federal law, or for the purpose of aiding or abetting another in committing a terrorist act shall be guilty of a Class A felony.

15. A person who commits the crime of identity theft for the purpose of voting, obtaining another person's voting privileges, or altering the results of an election or aiding or abetting another in obtaining another person's voting privileges or altering the result of an election shall be guilty of a Class C felony.

570.224. 1. A person commits the crime of trafficking in stolen identities when such person manufactures, sells, transfers, purchases, or possesses, with intent to sell or transfer means of identification or identifying information, for the purpose of committing identity theft. In determining possession of five or more identification documents of the same person, or possession of identifying information of five or more separate persons for the purposes of evidence pursuant to this subsection, the following do not apply:

- (1) The possession of his or her own identification documents;
- (2) The possession of the identification documents of a person who has consented to the person at issue possessing his or her identification documents.

2. Unauthorized possession of means of identification of five or more separate persons, shall be evidence that the identities are possessed with intent to manufacture, sell, or transfer means of identification or identifying information for the purpose of committing identity theft.

3. Trafficking in stolen identities is a class B felony.

575.120. 1. A person commits the crime of false impersonation if [he] **such person:**

(1) Falsely represents himself **or herself** to be a public servant with purpose to induce another to submit to his **or her** pretended official authority or to rely upon his **or her** pretended official acts, and

(a) Performs an act in that pretended capacity; or

(b) Causes another to act in reliance upon his **or her** pretended official authority; [or]

(2) Falsely represents himself **or herself** to be a person licensed to practice or engage in any profession for which a license is required by the laws of this state with purpose to induce another to rely upon such representation, and

(a) Performs an act in that pretended capacity; or

(b) Causes another to act in reliance upon such representation; **or**

(3) **Upon being arrested, falsely represents himself or herself, to a law enforcement officer, with the first and last name, date of birth, or Social Security number, or a substantial number of identifying factors or characteristics as that of another person that results in the filing of a report or record of arrest or conviction for an infraction, misdemeanor, or felony that contains the first and last name, date of birth, and Social Security number, or a substantial number of identifying factors or characteristics to that of such other person as to cause such other person to be identified as the actual person arrested or convicted.**

2. If a violation of subdivision (3) of subsection 1 of this section is discovered prior to any conviction of the person actually arrested for an underlying charge, then the prosecuting attorney, bringing any action on the underlying charge, shall notify the court thereof, and the court shall order the false-identifying factors ascribed to the person actually arrested as are contained in the arrest and court records amended to correctly and accurately identify the defendant and shall expunge the incorrect and inaccurate identifying factors from the arrest and court records.

3. If a violation of subdivision (3) of subsection 1 of this section is discovered after any conviction of the person actually arrested for an underlying charge, then the prosecuting attorney of the county in which the conviction occurred shall file a motion in the underlying case with the court to correct the arrest and court records after discovery of the fraud upon the court. The court shall order the false identifying factors ascribed to the person actually arrested as are contained in the arrest and court records amended to correctly and accurately identify the defendant and shall expunge the incorrect and inaccurate identifying factors from the arrest and court records.

4. Any person who is the victim of a false impersonation and whose identity

has been falsely reported in arrest or conviction records may move for expungement and correction of said records under the procedures set forth in section 610.123, RSMo. Upon a showing that a substantial number of identifying factors of the victim was falsely ascribed to the person actually arrested or convicted, the court shall order the false identifying factors ascribed to the person actually arrested as are contained in the arrest and court records amended to correctly and accurately identify the defendant and shall expunge the incorrect and inaccurate factors from the arrest and court records.

5. False impersonation is a class B misdemeanor unless the person represents himself to be a law enforcement officer in which case false impersonation is a class A misdemeanor.

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